**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Universal Service Contribution Methodology | ) | WC Docket No. 06-122 |

# COMMENTS OF TRACFONE WIRELESS, INC.


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## EXECUTIVE SUMMARY

In its recent *Notice of Proposed Rulemaking*, the Federal Communications Commission ("FCC" or "Commission") proposes to adopt an "overall cap" on the Commission's Universal Service Fund. Although the Commission advances this proposal in the interest of promoting "efficient and responsible use of these federal funds," if adopted the proposal would actually serve to undermine these objectives by allowing under-utilized programs to become slush funds for the others. Moreover, by seeking to develop a prioritization scheme that pits the four universal service programs against one another to compete for funding, the Commission's proposal threatens the stability of the four programs, including the under-utilized Lifeline program, while posing significant administrative challenges for the programs' operations. TracFone Wireless, Inc. ("TracFone") urges the Commission to abandon this proceeding and to continue to allow the programs to operate under their existing rules and restrictions, which already include individual caps and budgets as well as other measures to ensure the efficient and responsible use of funds.

To the extent the Commission proceeds with adopting an overall cap on the Universal Service Fund, TracFone urges the Commission to take four steps to minimize the flaws in this approach: (1) set the global cap at an amount that reflects the existing $2.28 billion budget for the Lifeline program, with adjustment for inflation; (2) allow each program to operate pursuant to its existing program rules, including Lifeline's budget monitoring and reporting mechanism; (3) refrain from increasing the cap or budget of any one program without evaluating, and in all likelihood proportionately increasing, the overall cap; and (4) initiate a new proceeding focused on improving Lifeline penetration that would evaluate the decline in subscribers, examine the policies that have caused the decline, and reevaluate the current subsidy amount.

Finally, the Commission has offered no proposal whatsoever for a self-enforcing budget mechanism for the Lifeline program, which currently operates pursuant to a "soft cap" that requires a bureau-level report in the event the program reaches 90 percent of its budget. To the extent the Commission seeks to impose a self-enforcing budget mechanism to implement a global cap on the Universal Service Fund, the Commission must issue a *Further Notice of Proposed Rulemaking* in this proceeding to give interested stakeholders sufficient notice of the form such a mechanism may take. Any proposal included in such a *Further Notice* should ensure such apparatuses are clearly defined and should avoid discriminating among consumers over factors such as rurality.

## TABLE OF CONTENTS

**Before the**
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| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
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**COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. ("TracFone") offers comments in response to the above-referenced *Notice of Proposed Rulemaking* ("*NPRM*"), in which the Federal Communication Commission ("FCC" or "Commission") seeks comment on "establishing a cap on the Universal Service Fund (USF or Fund) and ways it could enable the Commission to evaluate the financial aspects of the four USF programs in a more holistic way[.]"[1] The Commission should not impose a global USF cap, which would unnecessarily jeopardize the Lifeline program while failing to meet—and even undermining—the Commission's objectives to promote fiscal responsibility and efficiency across the four USF programs.

To the extent the Commission proceeds with adopting a global USF cap, the Commission should take four steps to minimize the problems that could arise from taking this approach: (1) set the global cap at an amount that reflects the existing $2.28 billion budget for the Lifeline program, with adjustment for inflation; (2) allow each program to operate pursuant to its existing program rules, including Lifeline's existing budget monitoring and reporting mechanism; (3) refrain from increasing the cap or budget of any one program without evaluating, and in all likelihood proportionately increasing, the overall cap; and (4) initiate a new proceeding focused on improving

[1] *Universal Service Contribution Methodology*, Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC 19-46 (rel. May 31, 2019) ("*NPRM*").

Lifeline penetration that would evaluate the decline in subscribers, examine the policies that have caused the decline, and reevaluate the subsidy amount.

Finally, to the extent the Commission seeks to impose a self-enforcing budget mechanism for the Lifeline program—for which no proposal was offered in the *NPRM*—it must issue a *Further Notice of Proposed Rulemaking* in this proceeding to give interested stakeholders some notice of the form such a mechanism may take. Should the Commission pursue such a *Further Notice* and develop proposals for a hard cap mechanism for the Lifeline program, it should ensure such protocols are clearly defined and should avoid discriminating among consumers over factors such as rural versus urban residence.

## I. A GLOBAL CAP ON THE UNIVERSAL SERVICE FUND IS UNNECESSARY, THREATENS THE LIFELINE PROGRAM, AND UNDERMINES THE COMMISSION'S POLICY OBJECTIVES.

The Commission seeks comment on adopting an "overall USF cap," through one of two proposed methods: (1) reducing projected expenditures to stay within the cap when disbursements are projected to exceed the cap; or (2) capping the commitments issued by the Universal Service Administrative Company ("USAC").[2] Either method would require protocols for how disbursements would be curtailed under each of the four USF programs in the event the global cap is reached or projected to be reached. As the *NPRM* acknowledges, two of these programs—E-Rate and the Rural Healthcare Program ("RHC")—operate pursuant to self-enforcing caps, and thus already have such protocols.[3] The *NPRM* proposes retaining these existing protocols, and presumably adopting some type of self-enforcing mechanism for the other two programs as well

[2] *Id.* ¶ 12.

[3] *Id.* ¶ 17 n. 35.

as procedures for all programs in the event the global cap is reached before the individual program's cap is reached, although no specific proposals are advanced in this *NPRM*.[4]

As discussed further in Section III, *infra*, given the lack of any proposal for how Lifeline spending might be curtailed in the event the global USF cap is reached, the Commission must issue a further notice of proposed rulemaking before adopting protocols for a self-enforcing cap or other expenditure curtailing protocols for the Lifeline program. However, the Commission should abandon this idea altogether because a global cap is simply not in the interests of the Commission or the USF programs. First, a hard cap on Lifeline is unnecessary for the Lifeline program given current levels of Lifeline penetration. Second, because Lifeline demand falls well below the number of eligible households, imposing a true cap on the Lifeline program consistent with the proposals advanced in the *NPRM* would undermine the Commission's policy objectives in two separate ways: (i) a cap policy which allows one program to cannibalize the others as suggested in the *NPRM* would disincentivize fiscal responsibility and efficiency; and (ii) a prioritization scheme for program disbursements in the event the cap is reached would create administrability challenges for the Commission and contradict the policy goals underlying universal service.

### A. A True "Cap" on the Lifeline Program Is Unnecessary Given Current Lifeline Penetration Rates and Threatens to Harm Program Growth and Lifeline Subscribers.

A global USF cap scheme which requires placing some type of hard cap on the Lifeline program is ill-advised because the Lifeline program is tragically underutilized. Using data from the 2016 U.S. Census American Community Survey USAC estimates that only 28% of eligible

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[4] *See NPRM* ¶ 17 (seeking comment on "how to reduce expenditures if USAC projects that disbursements will exceed the overall USF cap" and noting that "the program rules for each of the four universal service programs will continue to govern those programs, and therefore existing spending constraints in place would prevent some, but not all, of the universal service programs from exceeding their caps").

households participated in the Lifeline program in 2017.[5] This means that although the Lifeline program helped more than 10.7 million households stay connected through mobile or landline service in 2017, nearly 39 million households living in poverty and eligible for these benefits did not receive them.[6] In fact, Lifeline participation has recently been declining despite eligibility numbers remaining consistent. This is likely due to recent policy changes that have hampered providers' ability to provide services, including minimum service standards and the phase-out of standalone voice services.[7]

As TracFone explained in its comments opposing the Commission's proposal in the *2017 Lifeline NPRM* to adopt a self-enforcing budget mechanism,[8] imposing such a cap on the Lifeline program could depress organic growth and, in the event the cap is ultimately reached, cause tremendous harm to Lifeline subscribers—a vulnerable population that depends on Lifeline services to stay connected in an era where access to communications services is essential for employment, education, safety, social interaction, and nearly every facet of everyday life. For many if not all existing subscribers, being cut off from Lifeline benefits is simply not an option. For new eligible subscribers enrolling for the first time, Lifeline may operate as a true lifeline—providing access to essential communications services and freeing up monthly income to cover other necessary expenses. In the interest of the Lifeline population the program seeks to serve, the Commission should retain the existing budget policy for the Lifeline program rather than adopting a hard cap.

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5 USAC, "Lifeline Participation," https://www.usac.org/li/about/process-overview/stats/participation.aspx.

6 *Id.*

7 Indeed, USAC's prior Lifeline participation statistics based on 2015 data estimated that 33% of eligible households participate in the program. *See* Comments of TracFone, WC Docket Nos. 17-287, 11-42, and 09-197, at 60 (filed Feb. 21, 2018) ("TracFone 2017 Lifeline Proceeding Comments").

8 *Id.* at 59-61.

### B. A Global USF Cap that Includes the Underutilized Lifeline Program Would Undermine the Commission's Goals in Establishing the Cap.

In considering a global USF cap, the Commission seeks comment on a cap of $11.42 billion, which would incorporate the current $2.28 billion budget for the Lifeline program and the other existing program budgets and caps from 2018.[9] Although this would be an appropriate level for the global cap in the event the Commission proceeds with this proposal, in practice establishing a global cap would undermine the Commission's objectives to "determine the most efficient and responsible use of these federal funds" and "minimiz[e] the financial burden on ratepayers."[10]

Because the Lifeline program budget, by design, has ample room to grow consistent with demand, combining the USF program budgets under one cap positions the Lifeline program to end up becoming a "blood donor" for the others. If the Commission shifts its focus to keeping USF within an overall cap rather than focusing on the spending levels of each individual program, then the Commission could drastically increase the size of other programs while still remaining within the cap by exploiting the unused funds in the Lifeline budget—funds which have been established to allow the program to grow to reach additional eligible subscribers, consistent with the program's objectives to make universal service support "specific, predictable, and sufficient" for low-income consumers "in all regions of the Nation."[11] A global cap thus could create all kinds of perverse incentives for the agency and for participants of the High Cost, E-Rate, and Rural Health Care programs, including seeking to depress Lifeline enrollment to make up for another program approaching its individual cap. Indeed, the Commission suggests in the *NPRM* it may create a

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9 *NPRM* ¶ 9. In addition to Lifeline, the existing 2018 budgets and caps are $4.5 billion for the High Cost program, $4.062 billion for the E-Rate program, and $581 million for the RHC program. *Id*. ¶ 9 n. 22.

10 *Id*. ¶¶ 1, 9.

11 47 U.S.C. § 254(b)(5), (b)(3).

whole new program without reducing the overall cap.[12] If all other programs operate near their caps, then this could be accomplished only by taking from the Lifeline budget, potentially putting an end to program growth and jeopardizing the services of existing subscribers. Further, allowing one program to use the other's unused funds discourages fiscal responsibility at the program level. It would render the current budget caps placed on the three non-Lifeline programs meaningless as the Lifeline "blood reserve" could help absorb any expenditure in excess of the individual program's budget cap, so long as the aggregate spending does not exceed the global cap level. Thus, forcing all USF programs to share a collective budget could actually undermine the Commission's objectives to ensure fiscal responsibility and efficient use of USF funds.

### C. A Global Cap that Pits the USF Programs against One Another Would Create Significant Administrability Challenges While Contravening USF Policy Objectives.

The Commission rightly acknowledges that if it establishes a global cap for the USF programs, "[t]he overall cap could be exceeded due to rising demand, or a future Commission decision to increase funding for a program or to institute a new USF program," and asks, in either scenario, "[w]hat criteria should be used in prioritizing reductions of one program against reduction in another?"[13] Prioritizing one program over others in the event the proposed global cap is reached is a futile task that threatens to undermine the integrity of the Fund.

First, the programs measure success in different ways, making it difficult or impossible to compare the programs to determine which programs should receive priority. The USF programs vary in whether they fund services versus infrastructure deployment, and among programs that

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[12] *NPRM* ¶ 17 (explaining that the overall cap could be "exceeded due to rising demand, or a future Commission decision to increase funding for a program or to institute a new USF program without any corresponding increase in the overall cap").

[13] *Id.*

fund services, the discount levels and the service components that may receive funding vary from program to program. This variety in structure and purpose of the four programs precludes meaningful comparison of success in a holistic manner.

Second, disparities in the participant base also create challenges for prioritization. Unlike some of the other USF programs, a prioritization scheme for Lifeline will have a direct and immediate impact on individual consumers, who will be unfairly prevented from utilizing the program due to no fault of their own. The impacts of prioritization on other programs may be more dispersed, such as across school districts or a carrier's deployment plan, and thus may not be felt as severely by individual consumers.

Thus, a global USF cap which requires the Commission to choose USF winners and losers in the event the overall cap is reached – despite the performance of individual programs under their respective caps and budgets – promises to create difficult challenges of administrability, and, more fundamentally, runs counter to the policy objectives underlying the Fund. Where one program can thwart another, either through borrowing from its budget or cap or by receiving priority in the event the overall cap is reached, the statutory objective to provide "specific, predictable, and sufficient . . . mechanisms to preserve and advance universal service" undeniably falters. Because a global cap would undermine the Commission's policy objectives and could threaten the stability of individual programs and the program-level fiscal responsibility the Commission has worked hard to cultivate, the Commission should terminate this proceeding and abandon efforts to establish a global USF cap.

## II. SHOULD THE COMMISSION CONTINUE THIS PROCEEDING AND ESTABLISH AN OVERALL CAP FOR USF PROGRAMS, IT SHOULD TAKE FOUR STEPS TO MINIMIZE THE INHERENT FLAWS IN THIS PROPOSAL.

In the event the Commission continues with this proceeding and endeavors to take a holistic look at USF spending and budgets rather than allow each program to function and flourish individually, the Commission should take four steps to minimize the inherent flaws in taking such an approach: (1) the Commission should set the Lifeline cap at the proposed $2.28 billion with an inflation adjustment; (2) the Commission should allow each program to operate pursuant to its *existing* program rules, budgets, and caps, including Lifeline's existing "soft cap" budget mechanism; (3) the Commission should not increase the cap or budget of any one program without evaluating, and likely revising, the overall cap; and (4) the Commission should initiate a new proceeding focused on improving Lifeline penetration.

### A. The Commission Should Set a Cap that Reflects the $2.28 Billion Lifeline Budget.

The *NPRM* seeks comment on the amount of the global USF cap, but proposes only one specific figure: "$11.42 billion, which is the sum of the authorized budgets for the four universal service programs in 2018[.]"[14] Under this proposal, the global cap would incorporate the existing budget of $2.28 billion for the Lifeline program. This proposal is appropriate given that it reflects a figure for Lifeline that allows for organic growth and is consistent with past proceedings.

A global USF cap that reflects the $2.28 billion Lifeline budget is appropriate considering such level reflects roughly 50% penetration. Further, this is consistent with the Commission's *2016 Lifeline Order*. Indeed, as the Commission observed in that proceeding, a budget of this level for the Lifeline program "would allow over 20 million households to participate in the program with basic support for an entire year before the budget is reached," thereby "establish[ing] a ceiling with appropriate room for organic growth[.]"[15] Also consistent with the *2016 Order*, this budget should be adjusted annually for inflation.[16]

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14 *NPRM* ¶ 9.

15 *Lifeline and Link Up Reform and Modernization*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶ 401 (2016) ("*2016 Lifeline Order*").

16 *Id*. ¶ 403.

### B. The Commission Should Allow Each Program to Operate Pursuant to Its Existing Program Rules—Including Lifeline's Non-Self-Enforcing Budget—and Should Not Increase the Cap for Any One Program without Evaluating, and Likely Raising, the Global Cap.

The Commission also should allow each program to operate pursuant to its existing rules in the event it adopts a global cap. This includes the Lifeline program, which operates pursuant to a budget monitoring and reporting mechanism in lieu of a hard "cap." Moreover, rather than increasing the cap for one program by taking from another, the Commission should not raise a cap for any individual program without evaluating—and in all likelihood commensurately raising—the global cap.

The *NPRM* proposes "that the program rules for each of the four universal service programs will continue to govern those programs," which means that the E-Rate and RHC programs would operate pursuant to their existing self-enforcing caps.[17] The Commission described in more detail how this would work in practice in a separate part of the *NPRM* discussing a proposal to combine these two programs: "[t]o ensure that each program has a predictable level of support, we also propose that if demand for either programs were to meet or exceed their individual program funding caps, each program would continue to be subject to its individual program cap and the existing program rules would apply. For example, if in funding year 2018 demand for E-Rate support exceeded the E-Rate cap and demand for RHC support also exceeded that program's existing cap, E-Rate requests would be prioritized according to current E-rate program rules, up to $4.062 billion, and RHC requests would be subject to the proration rules in effect in RHC, up to $581 million."[18]

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17 *NPRM* ¶ 17.

18 *Id.* ¶ 25.

TracFone agrees that having each program operate pursuant to its existing rules will help to ensure predictability and integrity of the Fund. To this end, the Commission should allow all four programs to operate pursuant to existing rules, rather than imposing self-enforcing hard caps on those programs that are not already subject to such mechanisms. Under this holistic but individual approach, in the event a given program was projected to exceed its budget, E-Rate and RHC would operate pursuant to their respective self-enforcing mechanisms, Lifeline would operate pursuant to the budget monitoring and reporting process established in the *2016 Lifeline Order*, whereby the Wireline Competition Bureau monitors the Lifeline budget an submits a report to the Commission if disbursements reach 90 percent of the budget,[19] and the High Cost program would operate pursuant to its similar budget monitoring and reporting process.[20]

Although the Commission proposes to allow each program to operate pursuant to its own rules, the *NPRM* contemplates the Commission "deci[ding] to increase funding for a program . . . without any corresponding increase in the overall cap."[21] Such an outcome would undermine the fiscal responsibility and tailored program management inherent in the individual rules for each program, while threatening the continued viability of programs operating below their budgets like Lifeline. Accordingly, the Commission should not seek to increase the budget or cap for any one fund without carefully evaluating the overall cap. If the factors underlying the budgets or caps for the other programs – such as the Commission's findings in 2016 regarding Lifeline penetration and the need to allow for organic growth – remain unchanged, then the Commission should

[19] 47 C.F.R. § 54.423(b).

[20] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 18 (2011).

[21] *NPRM* ¶ 17.

increase the global cap commensurate with the increase in the individual program, rather than allow one program to be gutted for the benefit of another.

### C. The Commission Should Initiate a Proceeding to Consider How It Can Improve Lifeline Penetration.

Finally, in the event the Commission proceeds with a global USF cap, it should initiate a new proceeding to improve Lifeline penetration. The Commission's primary goal in this proceeding is to improve the extent to which the Commission "efficiently and responsibly use[s] USF financial resources."[22] Carefully evaluating the Lifeline program and considering how to improve the reach of the program to existing eligible subscribers certainly would serve this goal. Indeed, the goal of the Lifeline program is to improve access to communications services for low-income consumers across the country. Eligible telecommunications carriers all around the country have developed processes and service plans to cater to the Lifeline community and stand ready to serve unserved subscribers. Yet, as discussed above, the program remains significantly under-utilized.

The Commission should explore how it can better reach eligible subscribers with the Lifeline program. This new proceeding should look at ways to reverse the drastic decline over the past several years, including by eliminating the minimum service standards, which have had the unintended consequences of shrinking the universe of Lifeline providers and greatly hampering the ability of remaining providers to offer services that Lifeline customers can afford. This proceeding should also evaluate the recently-adopted National Verifier as it continues to be developed and deployed by USAC, and should ensure that the Verifier functions with the best interest of consumers in mind. Finally, the proceeding should take a hard look at the existing

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22 *NPRM* ¶ 3.

$9.25 support level. This support level originated in the Commission's *2012 Lifeline Order*, in which the Commission evaluated the existing four-tier framework for Lifeline support and chose $9.25 for the flat fee for non-Tribal Lifeline support, which was equal to the average amount subscribers received in 2011.[23] Because this figure bears no relationship to the cost of provisioning fixed or mobile broadband services in the United States today, the Commission should reevaluate the support cap as part of its proceeding on improving Lifeline penetration.

## III. IN THE EVENT THE COMMISSION INSISTS ON A SELF-ENFORCING CAP FOR THE LIFELINE PROGRAM THROUGH THIS PROCEEDING, IT MUST ISSUE A FURTHER NOTICE OF PROPOSED RULEMAKING.

The four-step proposal advanced by TracFone above involves retaining the existing "soft cap" budget monitoring and reporting mechanism for the Lifeline program, thus balancing the need for fiscal responsibility against the unique needs of the Lifeline program (which provides subsidies directly to individual, low-income consumers who depend on the telecommunications services received through the program). To the extent the Commission subverts this balance and nonetheless seeks to adopt a self-enforcing hard cap on the Lifeline program through this proceeding, it must issue a *Further Notice of Proposed Rulemaking* which sets forth a proposal for such a cap, and collect comment on the proposal, prior to adopting final rules.

The *NPRM* concludes that "capping the Fund overall" will meet the Commission's policy objectives for the USF program, and "seek[s] comment on how to reduce expenditures if USAC projects that disbursements will exceed the overall USF cap."[24] The *NPRM* goes on to note that "the program rules for each of the four universal service programs will continue to govern those programs, and therefore existing spending constraints in place would prevent some, but not all, of

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23 *Lifeline & Link Up Reform & Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶¶ 53-58 (2012).

24 *NPRM* ¶¶ 9, 17.

the universal service programs from exceeding their caps."[25] This implies that in order to establish a "cap" whereby expenditures would be reduced if disbursements would exceed that cap, the Commission must adopt some type of mechanism for reducing expenditures for the Lifeline program. However, the *NPRM* fails to propose *any* such mechanisms, either for an individual self-enforcing cap for the Lifeline budget or for some other type of mechanism which would be triggered only if the global cap were reached.

Accordingly, TracFone cannot comment on the Commission's proposal with respect to capping the Lifeline program because the Commission *has offered no proposal whatsoever*. Thus, consistent with the Administrative Procedure Act ("APA")—under which an agency's final rule must be the "'logical outgrowth' of an earlier request for comment"[26]—the Commission must issue a *Further Notice of Proposed Rulemaking* in this proceeding to the extent the Commission is contemplating imposing some type of mechanism by which it would reduce or preclude Lifeline expenditures in connection with a global USF cap.[27] Indeed, as many courts have observed, "something is not the logical outgrowth of nothing."[28] This *Further Notice* must set forth proposals regarding the procedures, protocols, and prioritization policies the Commission might use to decrease and eliminate Lifeline expenditures in the event total projected USF disbursements

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25 *Id.* ¶ 17.

26 *Mid Continent Nail Corp. v. United States*, 846 F.3d 1364, 1373 (Fed. Cir. 2017) (citing *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174, 127 S.Ct. 2339, 168 L.Ed.2d 54 (2007); *Veteran's Justice Grp., LLC v. Sec'y of Veterans Affairs*, 818 F.3d 1336, 1344 (Fed. Cir. 2016). These cases interpret a provision of the APA which requires agencies to "provide *notice* of proposed rule making," including "the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b) (emphasis added).

27 Nor is the Commission's reference to a separate proceeding in which the Commission has proposed a self-enforcing cap for the Lifeline program—which appears in a footnote and does not even cite to the relevant proceeding, *see NPRM* ¶ 35—sufficient to provide notice that such proposals may be adopted in this proceeding under standards established by the APA. *See, e.g., MCI Telecommunications Corp. v. FCC,* 57 F.3d 1136, 1140 (D.C. Cir. 1995) (footnote reference to possible rule change to one category of regulated entities was insufficient to provide notice of proposed rule making under the APA).

28 *See, e.g., Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994); *Mid Continent Nail Corp*, 846 F.3d at 1373.

approach the global cap, so that interested parties need not "divine the agency's unspoken thoughts" about how such a self-enforcing cap would operate.[29]

Although the Commission has not issued a proposal on establishing a hard cap on the Lifeline program, TracFone suggests basic principles to guide the Commission's development of a *Further Notice of Proposed Rulemaking*, in the event the Commission pursues this issue further. First, any new self-enforcing budget mechanism for the Lifeline program must clearly identify how program spending will be curtailed in the event the cap is reached to ensure predictability and sufficiency for the program and its participants. Second, in establishing such a mechanism, the Commission should decline to discriminate among subscribers. In its 2017 *NPRM*, the Commission proposed a mechanism that prioritized rural Tribal lands, followed by rural areas, followed by all other areas. As TracFone explained in its comments in that proceeding, such a mechanism would "arbitrarily discriminate against non-rural subscribers" and must be avoided.[30]

## IV. CONCLUSION

In light of the foregoing, TracFone respectfully urges the Commission to terminate this proceeding without adopting final rules; in the alternative, TracFone respectfully requests that the Commission continue evaluating the issues in this proceeding consistent with the comments provided herein.

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[29] *Shell Oil Co. v. EPA*, 950 F.2d 741, 751 (D.C. Cir. 1991); *see also, e.g., Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005).

[30] TracFone 2017 Lifeline Proceeding Comments at 61.

Respectfully Submitted,

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